

REMARKS

The Office Action dated September 30, 2003, has been received and reviewed.

Claims 1-24 are currently pending and under consideration in the above-referenced application. Of these, claims 1-11, 14, 15, 19, 20, and 24 stand rejected. It has been indicated that claims 12, 13, 16-18, and 21-23 recite allowable subject matter.

The title of the above-referenced application has been amended to more accurately reflect the subject matter recited in the claims of the above-referenced application.

The claims have been amended to replace the term "configuration" with "shape," "manipulate" and variations thereof with "form" and variations thereof, and "said" with "the." Some occurrences of the term "said" were also deleted, as they were extraneous. As these revisions merely comprise the substitution of some of the originally-recited terms with equivalent terms and the removal of extraneous terms, they do not alter the scope of any of the claims of the above-referenced application.

Reconsideration of the above-referenced application is respectfully requested.

Preliminary Amendment

Please note that a Preliminary Amendment was filed in the above-referenced application on January 14, 2002, but that the undersigned attorney has not yet received any acknowledgement that the Preliminary Amendment has been entered into the Office file for the above-referenced application. If, for some reason, the Preliminary Amendment has not yet been entered into the Office file, the undersigned attorney would be happy to provide the Office with a true copy thereof.

Rejections Under 35 U.S.C. § 102

Claims 1-11, 14, 15, 19, and 20 stand rejected under 35 U.S.C. § 102.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single reference which qualifies as prior art under 35 U.S.C. § 102. *Verdegaal Brothers v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053

(Fed. Cir. 1987). The identical invention must be shown in as complete detail as is contained in the claim. *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

Broadhurst

Claims 1-3, 14, and 15 stand rejected under 35 U.S.C. § 102(b) for reciting subject matter which is purportedly anticipated by that described in U.S. Patent 4,850,371 to Broadhurst et al. (hereinafter “Broadhurst”).

Broadhurst describes, among other things, a mouthpiece device 143 which includes a double-walled mouthpiece tube 144, comprising an inner tube 145 and an outer tube 146. Col. 12, lines 54-57; Figs. 5 & 6. Neither the inner tube 145 nor the outer tube 146 of the mouthpiece device 143 of Broadhurst includes at least a section which is configured to be formed to a desired shape or to substantially maintain the desired shape until formed to another desired shape, as recited in amended independent claims 1 and 15. Therefore, the disclosure of Broadhurst does not anticipate each and every element of either amended independent claim 1 or amended independent claim 15.

Accordingly, it is respectfully submitted that, under 35 U.S.C. § 102(b), amended independent claims 1 and 15 both recite subject matter which is allowable over that described in Broadhurst.

Claims 2, 3, and 14 are each allowable, among other reasons, for depending either directly or indirectly from claim 1, which is allowable.

Gaston

Claims 1-4, 6-11, and 15 stand rejected under 35 U.S.C. § 102(b) for reciting subject matter which is assertedly anticipated by the subject matter described in U.S. Patent 6,033,368 to Gaston, IV, et al. (hereinafter “Gaston”).

Gaston describes a nitrogen oxide analyzer that includes, among other things, an elongate condensing chamber 5 and an elongate coolant chamber 6 that are coaxially arranged, with the condensing chamber 5 extending through the coolant chamber 6. Col. 4, lines 32-47. Gaston neither expressly nor inherently describes that either the condensing chamber 5 or the coolant

chamber 5 of the nitrogen oxide analyzer described therein includes at least a section which is configured to be formed to a desired shape or to substantially maintain the desired shape until formed to another desired shape, as is recited in amended independent claims 1 and 15. Therefore, Gaston does not anticipate each and every element of either amended independent claim 1 or amended independent claim 15.

It is, therefore, respectfully submitted that, under 35 U.S.C. § 102(b), amended independent claims 1 and 15 are both drawn to subject matter which is allowable over that described in Gaston.

Each of claims 4 and 6-11 is allowable, among other reasons, for depending either directly or indirectly from claim 1, which is allowable.

Murdock

Claims 1, 2, 5, 14, 15, 19, and 20 stand rejected under 35 U.S.C. § 102(e) for reciting subject matter which is purportedly anticipated by the disclosure of U.S. Patent 6,581,595 to Murdock et al. (hereinafter "Murdock").

The description of Murdock is drawn to a positive airway pressure device which includes, among other things, a patient interface device 26, such as a face mask (col. 4, lines 3 & 4) and flexible tubing 24 detachably connected to the patient interface device 26 (col. 3, lines 64-66). *See also* Fig. 1.

Murdock does not expressly or inherently describe that the flexible tubing 24 or any other conduit of the device described therein includes at least a section which is configured to be formed to a desired shape or to substantially maintain the desired shape until formed to another desired shape, as is recited in amended independent claims 1 and 15. As such, Murdock does not anticipate each and every element of either amended independent claim 1 or amended independent claim 15.

Murdock also lacks any express or inherent description of forming at least a portion of the flexible tubing 24 or any other conduit described therein to a desired shape, with the flexible tubing 24 or other conduit being configured so as to substantially maintain the desired shape, as required by amended independent claim 19.

For these reasons, it is respectfully submitted that Murdock does not anticipate each and every element of any of amended independent claims 1, 15, and 19 under 35 U.S.C. § 102(e).

Claims 2, 5, and 14 are each allowable, among other reasons, for depending from claim 1, which is allowable.

Claim 20 is allowable, among other reasons, for depending from claim 19, which is allowable.

In view of the foregoing, it is respectfully requested that the 35 U.S.C. § 102 rejections of claims 1-11, 14, 15, 19, and 20 be withdrawn.

Rejections Under 35 U.S.C. § 103(a)

Claim 24 stands rejected under 35 U.S.C. § 103(a) for reciting subject matter which is purportedly unpatentable over the teachings of Murdock, in view of teachings from U.S. Patent 5,038,792 to Mault (hereinafter "Mault").

Claim 24 is allowable, among other reasons, for depending either directly or indirectly from claim 19, which is allowable.

Allowable Subject Matter

The indication that claims 12, 13, 16-18, and 21-23 recite allowable subject matter is gratefully acknowledged. None of these claims has been amended to independent form, however, as, for the reasons provided herein, the claim from which each depends is also believed to be allowable.

CONCLUSION

It is respectfully submitted that each of claims 1-24 is allowable. An early notice of the allowability of each of these claims is respectfully solicited, as is an indication that the above-referenced application has been passed for issuance. If any issues preventing allowance of the above-referenced application remain which might be resolved by way of a telephone conference, the Office is kindly invited to contact the undersigned attorney.

Respectfully submitted,



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